



**IN THE HIGH COURT OF JUSTICE**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**INTELLECTUAL PROPERTY LIST (ChD)**

**BETWEEN:**

**(1) GETTY IMAGES (US), INC.**

**(a company incorporated under the laws of the State of New York)**

**(2) GETTY IMAGES INTERNATIONAL U.C.**

**(a company incorporated under the laws of Ireland)**

**(3) GETTY IMAGES (UK) LIMITED**

**(4) GETTY IMAGES DEVCO UK LIMITED**

**(5) ISTOCKPHOTO LP**

**(a company incorporated under the laws of Canada)**

**(6) THOMAS M. BARWICK, INC.**

**(a company incorporated under the laws of the State of Washington)**

**Claimants**

**-and-**

**(1) STABILITY AI LIMITED**

**Defendant**

---

**PARTICULARS OF CLAIM**

---



### The Claimants and their business

1. The First to Fifth Claimants are members of a group of companies (the “**Getty Images Group**”) ultimately owned and controlled by Getty Images Holdings, Inc. The Getty Images Group is a preeminent global visual content creator and market place.
2. The Getty Images Group licenses its content to creative, corporate and media customers in more than 200 countries around the world, with that content helping its customers to produce work which appears on a daily basis in the world’s most influential newspapers, magazines, advertising campaigns, films, television programs, books and websites.
3. The First Claimant was incorporated under the laws of the State of New York on 10 September 1974 under company number 351625.
4. The Second Claimant was incorporated under the laws of Ireland on 11 December 2015 under company number 573347.
5. The Third Claimant was incorporated under the laws of England and Wales on 4 March 1999 under company number 03728660. It is a wholly owned subsidiary of the Second Claimant.
6. The Fourth Claimant was incorporated under the laws of England and Wales on 26 September 2005 under company number 05573785. It is a wholly owned subsidiary of the Second Claimant.
7. The Fifth Claimant was incorporated under the laws of Canada on 4 September 2008 under company number LP14235873.
8. The Sixth Claimant is engaged in the business of creating and licensing visual content. It was incorporated under the laws of the State of Washington on 2 May 2005 under company number 602 498 856.

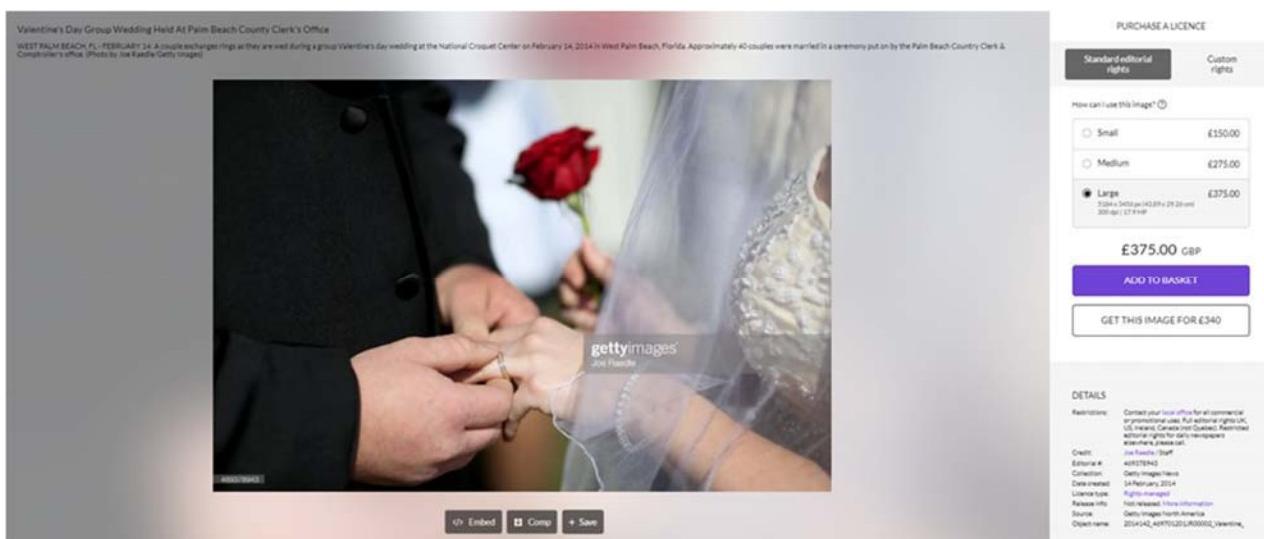
### The Getty Images Websites

9. The Getty Images Group, through its various members, operates websites at [gettyimages.com](http://gettyimages.com), [gettyimages.co.uk](http://gettyimages.co.uk) and [istockphoto.com](http://istockphoto.com) (“**the Getty Images Websites**”).



The content on the Getty Images Websites comprises millions of visual assets, including photographs and video footage, together with associated captions, covering a broad range of subject matter (“**the Content**”).

10. The Getty Images Websites enable users to search and browse the Content before purchasing a licence for specific content. For example, users might search for “a couple exchanges rings”. Among the search results, they might find the image below available for licence with the accompanying image caption “A couple exchanges rings as they are wed during a group Valentine's day wedding at the National Croquet Center on February 14, 2014 in West Palm Beach, Florida”:



11. As shown above at paragraph 10, the results that are produced in response to a search on the Getty Images Websites contain (in addition to content responsive to the search term), watermarks on photographs, credits and other metadata, and a notice that a licence is required for use.
12. The photographs that appear on the Getty Images Websites are highly desirable for use in connection with artificial intelligence and machine learning because of their high quality, and because they are accompanied by content specific, detailed captions and rich metadata. With appropriate safeguards for the rights and interests of its photographers and contributors and the subjects of the images in its collection, Getty Images also licenses the use of some of its



images and associated metadata in connection with the development of artificial intelligence and machine learning tools. Getty Images has licensed millions of digital assets to leading technology innovators for a variety of purposes related to artificial intelligence and machine learning.

### **Copyright**

13. A substantial proportion of the Content comprises original artistic works and/or film works in which copyright subsists and is either (i) owned by the First Claimant, or (ii) in respect of which the First Claimant is the exclusive licensee.
14. It is created and acquired by the First Claimant as follows:
  - 14.1. Via photographers and videographers who are employed by a member of the Getty Images Group, acting in the course of their employment. Where those photographers and videographers are not employed by the First Claimant but a member of the Getty Images Group, that member assigns all copyright subsisting in the relevant Content to the Second Claimant, who then assigns such copyright to the First Claimant.
  - 14.2. Via third party photographers and videographers, or businesses, who assign all intellectual property rights in the relevant Content to the First Claimant or a member of the Getty Images Group. Members of the Getty Images Group assign all copyright subsisting in the relevant Content to the Second Claimant, who then assigns such copyright to the First Claimant.
  - 14.3. Via third party photographers and videographers, or businesses, who provide the relevant Content to the First Claimant under the terms of an exclusive licence.
15. This claim concerns the copying by the Defendant of millions of copyright works in respect of which the First Claimant is either the copyright owner or the exclusive licensee (“**the Copyright Works**”). In the interests of proportionality, the Claimants will rely upon the copyright works identified below (copies of which appear at **Annex 1** hereto) as a sample of



the Copyright Works for the purpose of subsistence and ownership. That sample is referred to herein as "**the Sample Works**".

- 15.1. **Work A:** Work A is an artistic work (namely, a photograph) which was created by John Moore using his own intellectual creativity.
- 15.2. **Work B:** Work B is a film of which John Moore was the producer and principal director.
- 15.3. At all material times John Moore was an employee of the First Claimant acting in the course of his employment.
- 15.4. **Work C:** Work C is an artistic work (namely, a photograph) which was created by Jemal Countess using his own intellectual creativity.
- 15.5. By written assignment dated 8 August 2018, the copyright subsisting in Work C was assigned by Jemal Countess to the First Claimant.
- 15.6. **Work D:** Work D is a film of which Finnbarr Webster was the producer and principal director.
- 15.7. At all material times Finnbarr Webster was an independent supplier of content acting under the terms of a written agreement dated 18 January 2019, pursuant to which the copyright subsisting in Work D was assigned to the Fourth Claimant.
- 15.8. By written assignment dated January 2016 the copyright subsisting in Work D was assigned to the Second Claimant by the Fourth Claimant. That copyright was assigned by the Second Claimant to the First Claimant by a Costs Sharing Agreement dated 1 January 2015 ("**the Costs Sharing Agreement**").
- 15.9. **Works E to H:** Works E to H are artistic works (namely, photographs) which were created by Thomas Barwick using his own intellectual creativity.
- 15.10. **Works I to K:** Works I to K are films of which Thomas Barwick was the principal director and producer.



- 15.11. At all material times Thomas Barwick was a director of the Sixth Claimant and it was the intention of Thomas Barwick and the Sixth Claimant that all copyright subsisting in works created by Thomas Barwick (including Works E to K) would be owned by the Sixth Claimant such that the Sixth Claimant was at all material times the owner of the equitable title subsisting therein.
- 15.12. By written assignment dated 3 April 2023 Thomas Barwick assigned all legal and equitable title in the works created by him, including Works E to K, to the Sixth Claimant.
- 15.13. By a series of written licence agreements made on the First Claimant's standard terms between the First Claimant and the Sixth Claimant, commencing from 1 April 2011 and continuing, the Sixth Claimant granted the First Claimant an exclusive licence to content, including photographs and videos, submitted to the First Claimant. Details of the relevant licence agreements are set out at **Annex 2** hereto.
- 15.14. Copies of the agreements referred to in paragraph 15 will be provided upon receipt of appropriate confidentiality undertakings.
16. In the premises of paragraph 15 above and the facts and matters set out at **Annex 3** hereto, copyright subsists in the Copyright Works and:
- 16.1. in the case of Works A to D, is owned by the First Claimant.
  - 16.2. in the case of Works E to K, is owned by the Sixth Claimant and the First Claimant is the exclusive licensee.
17. In the interests of proportionality, this action is brought by the Sixth Claimant as a representative party pursuant to CPR r.19.6 of the parties that have concurrent rights of action with the First Claimant under sections 101 and 102 of the Copyright Designs and Patents Act 1988 ("the CDPA"), as owners of the copyright in the Content in respect of which the First Claimant is an exclusive licensee.



18. In the premises, the Sixth Claimant represents and has the same interest in this claim as the parties who are owners of artistic works and film works that have been licensed on an exclusive basis to the First Claimant.

### **Data and the Database**

19. The Content is obtained, processed and presented by the First and/or Second Claimants and/or members of the Getty Images Group, in a sophisticated database that they have developed since 1995 (“**the Database**”). In particular, the Database contains the following data (“**the Data**”):

19.1. Millions of photographs, videos and illustrations (“**Visual Assets**”).

19.2. Captions and keywords for each photograph, video and illustration (“**Captions**”).

19.3. Information relating to the creator and/or owner of the rights in relation to each photograph, video and illustration.

19.4. Other metadata, in addition to the items at 19.2 to 19.3 above, associated with each photograph, video and illustration.

20. The Data is arranged in a systematic or methodical way and is individually accessible by electronic or other means such that the Database is a “database” within the meaning of Article 1(2) of the Database Directive (Directive 96/9/EC) (“**the Directive**”) and Regulation 6 of the Copyright and Rights in Databases Regulations 1997 (SI 1997/3032) (“**the Regulations**”).

21. Pending disclosure and/or evidence, the process by which the Database is created is as follows:

21.1. In respect of live editorial content (being current content which covers news, sports and entertainment events), the Data is obtained, verified and presented as follows:

21.1.1. A team of around 28 Assignment Editors, together with around 15 other editorial operations staff, are responsible for sourcing Visual Assets from employees of members of the Getty Images Group, contractors and contributors. The majority



of the Assignment Editors and other staff are employed by the First and Fourth Claimants, with the remainder employed by other members of the Getty Images Group. In particular, these employees organise access to events, identify photographers for specific jobs and input relevant assignment information into the Editorial Workflow System (“EWS”). The inputting of the assignment information into EWS creates the event on the Getty Images Websites together with a template so that Visual Assets are assigned the correct metadata.

- 21.1.2. A team of around 45 employees who sit on the Global Content Desk (employed by members of the Getty Images Group, including the First and Fourth Claimants) are responsible for (i) verifying the metadata and Visual Asset quality to ensure that it is correct and up to the appropriate standard, (ii) verifying content for any legal issues and (iii) ensuring content is relevant. In the event that incorrect information or images appear on the Getty Images Websites the Global Content Desk Team is responsible for correcting or removing such content.
- 21.1.3. The Content Operations Team comprising four employees (employed by members of the Getty Images Group, including the First and Fourth Claimants) are responsible for content obtained from the Getty Images Group’s largest content partners such as AFP, BBC, Bloomberg, NBA and FIFA. In particular, the Content Operations Team is responsible for (i) verifying the accuracy of such content, (ii) the bulk uploading of such content when onboarding new content partners, (iii) in the event that large groups of content are incorrect, removing such content from the Getty Images Websites and/or correcting any errors in bulk, and (iv) applying regional blocks and hides on content whose sale is prohibited to certain customers or in certain regions.
- 21.1.4. The Field Editing Team comprising around 20 employees (employed by members of the Getty Images Group, including the First and Fourth Claimants) work remotely on the largest news, sport and entertainment events. In particular, the Field Editing Team is responsible for editing content in real time for editorial



customers and feeds and ensuring that the metadata on every Visual Asset is correct before uploading the asset on to the Getty Images Websites.

21.2. In respect of creative content (being all content other than editorial content), the Data is obtained, verified and presented as follows:

- 21.2.1. Third party contributors use several integrated web tools which enable them to upload Data to the Getty Images Websites themselves. The aforesaid integrated web tools are (i) either developed by members of the Getty Images Group, or developed by third parties for and on behalf of the Getty Images Group, and (ii) maintained by one or other members of the Getty Images Group.
- 21.2.2. Once Data has been uploaded to the Getty Images Websites as aforesaid, Creative Inspectors, being a team of around 70 employees (employed by members of the Getty Images Group including the First and Fourth Claimants), review it and verify the Visual Asset and associated Captions and metadata to check they are accurate and ensure they meet the Getty Images Group's legal, moral and content standards. The Data is then accepted, rejected or sent for revision or full review. Data that is accepted is published on the Getty Images Website for licensing as explained further below, whereas Data that is rejected is not. Where Data is rejected the contributor is informed of the reasons why it has not been accepted. In respect of Data that is sent for revision, the contributor is informed of the problem and invited to re-submit it.
- 21.3. Each Visual Asset that is available through the Getty Images Websites has an associated page that contains a unique URL pointing to a location where the image is stored, together with an "alt text" tag containing a caption for the image. The image URLs and captions, together with other current metadata are served from a table called "Product Catalog" which is populated from a master database called "DSA Persistence" that contains the complete historical metadata for each image. The Getty Images Websites are hosted by servers and are available via both IOS and Android apps, in 23 different languages.



22. The First and Second Claimants have made, and continue to make, a very substantial investment in the obtaining and/or verifying and/or presenting of the contents of the Database and have taken the initiative and assumed the risk of this investment. Where the First Claimant makes the relevant investment, the risk of that investment is shared by the Second Claimant as a result of the Cost Sharing Agreement. Accordingly, by Article 7(1) of the Directive and Regulation 14(1) of the Regulations, the First and Second Claimants are joint makers of the Database.

### **PARTICULARS**

Pending disclosure and/or evidence, the Claimants rely upon the following:

- 22.1. The substantial cost of developing and maintaining the software identified above at paragraph 21.2.1, which amounted to around \$146,963,194.42 between 2017 - 2020 and which was incurred by the First and Second Claimant.
  
- 22.2. The payment of substantial fees for obtaining content from Third party contributors. In 2020 this amounted to a total of \$159,649.00 of which \$82,602.39 was incurred by the First Claimant, and \$77,046.61 was incurred by the Second Claimant.
  
- 22.3. The payment of substantial fees in the form of wages paid to employees who support and maintain relationships with Third party contributors. The amounts incurred over the period 2017 to 2020 are as follows:

<b>Entity</b>	<b>2017 (\$)</b>	<b>2018 (\$)</b>	<b>2019 (\$)</b>	<b>2020 (\$)</b>
First Claimant	441,293.56	428,226.43	445,922.64	472,012.70
Second Claimant	426,780.22	436,658.66	435,978.57	440,273.27



22.4. The payment of substantial fees to content providers when their content, having been obtained, is subsequently licensed. These payments constitute an incentive for the relevant content provider to provide their content to Getty Images such that they constitute an investment in the obtaining of such content. The amounts incurred over the period 2017 to 2020 are as follows:

Entity	2017 (\$)	2018 (\$)	2019 (\$)	2020 (\$)
First Claimant	95,858,400.83	94,049,586.51	93,241,783.07	90,051,367.54
Second Claimant	92,526,353.47	95,825,949.29	91,055,271.89	83,186,208.02

22.5. The payment of substantial fees in the form of wages paid to employees and contractors to inspect contributor content submitted for presentation on the Getty Images Websites. The amounts incurred over the period 2017 to 2020 are as follows:

Entity	2017 (\$)	2018 (\$)	2019 (\$)	2020 (\$)
First Claimant	372,883.71	168,335.31	142,330.51	165,964.66
Second Claimant	360,620.25	171,650.02	139,156.54	154,804.75

22.6. The very substantial fees incurred in the preparation of analogue images for digital format and presentation on the Getty Images Websites. The amounts incurred over the period 2017 to 2020 are as follows:



Entity	2017 (\$)	2018 (\$)	2019 (\$)	2020 (\$)
First Claimant	886,623.02	788,718.57	651,614.42	384,527.43
Second Claimant	599,143.26	554,733.68	707,729.69	343,662.18

22.7. A very substantial ongoing expenditure in hosting the Getty Images Websites. The amounts paid over the period 2017 to 2020 are as follows:

Entity	2017 (\$)	2018 (\$)	2019 (\$)	2020 (\$)
First Claimant	2,374,152.36	7,118,369.05	6,925,282.35	6,499,890.59
Second Claimant	2,296,070.86	7,258,537.35	6,770,848.64	6,062,820.17

22.8. The Claimants estimate that the total sums currently expended on investment in obtaining, verifying and presenting the contents of the Database were around \$238,908,932.23 in 2017, \$245,081,943.01 in 2018, \$233,346,849.74 in 2019 and \$221,005,654.45 in 2020, of which the First Claimant paid around \$120,922,316.38 in 2017; \$121,519,964.25 in 2018; \$118,007,936.64 in 2019 and \$115,131,124.55 in 2020, and the Second Claimant paid around \$117,986,615.86 in 2017; \$123,561,978.76 in 2018; \$115,338,913.10 in 2019 and \$105,874,529.90 in 2020.



23. Prior to 31 December 2020, database right subsisted in the Database because the First and Second Claimants have made a substantial investment in and taken the initiative and the risk of the making of the Database, and they benefit from protection of the Database under database right as the Second Claimant, being a joint maker of the Database, was at all material times a qualifying body corporate under Article 11 of the Directive and Regulation 18 of the Regulations. This right continues to subsist in the Database post 31 December 2020 pursuant to Article 58 of the Withdrawal Agreement.
24. In the premises, prior to 31 December 2020 under Article 7(1) of the Directive and Regulation 15 of the Regulations, the First and Second Claimants are the owners of the database right in the Database, and of all accrued causes of action for infringement of that right. The Second Claimant, who complies with the requirements of Article 11 of the Directive, continues post 31 December 2020 to maintain an enforceable database right in respect of the Database in the UK, pursuant to Article 58 of the Withdrawal Agreement.

#### **Registered Trade Marks and Goodwill**

25. Further, the First Claimant is the registered proprietor of the following UK registered trade marks:
- 25.1. UKTM No. UK00911410859 (“**UK859**”), registered as of 3 July 2013 for GETTY IMAGES in respect of, *inter alia*:
- 25.1.1. “*digital media, digital materials, digital content, ... namely, images, pictures, photographs, archival photographs, photography pictorial images, still images, ... art reproductions, , ... news images, illustrations, ... and the above mentioned goods stored or recorded on electronic or computer media or downloadable from databases or other facilities provided over global computer networks, wide area networks, local area networks, or wireless networks*” in class 9.
- 25.1.2. “*computerized on-line search and retrieval services for images, pictures, photographs, archival photographs, photography pictorial images, still images,*



... art reproductions, ... news images, ... photography and other digital content" in class 42.

25.1.3. "*customized searching services, namely, providing information in response to end-users' specific requests for digital content available over wired and wireless networks*" in class 42.

25.2. UKTM No. UK00902313005 ("UK005"), registered as of 16 December 2003 for GETTY IMAGES in respect of, *inter alia*:

25.2.1. "*computer software on CD -ROM disks or downloadable format for use in the fields of creating and manipulating visual media, graphic images, news images, illustrations* in class 9.

25.2.2. "*photographs*" in class 16.

25.2.3. "*retail sales of photographs, namely stock photography services*" in class 35.

25.2.4. "*electronic delivery of images, photographs, art, graphic images, ... news images, illustrations ... via a global computer network and other computer networks*" in class 38.

25.2.5. "*providing access to various media, namely digital stock photography archival photographs, art, ... news images ... illustrations, graphic designs... via an interactive computer database*" in class 38.

25.2.6. "*computer aided transmission of messages and images*" in class 38.

25.2.7. "*digital imaging services*" in class 41.

25.2.8. "*photographic computer imaging*" in class 41.

25.2.9. "*providing access to an interactive online computer database in the fields of visual media, graphic images and graphic designs, photography, illustrations... reproductions of works of art*" in class 42.



25.2.10. “providing access to various media, namely digital stock photography, archival photographs, art, ... news images ... illustrations, graphic designs..., via an interactive computer database” in class 42.

25.3. UKTM No. UK00908257925 (“**UK925**”), registered as of 12 January 2010 for **gettyimages** in respect of, *inter alia*:

25.3.1. “*photographs*” in class 16.

25.3.2. “*digital imaging services*” in class 41.

26. Further, the Fifth Claimant is the registered proprietor of the following UK registered trade marks:

26.1. UKTM No. UK00908257297 (“**UK297**”), registered as of 22 April 2011 for **ISTOCK** in respect of, *inter alia*:

26.1.1. “*photographs*” in class 16.

26.1.2. “*photocomposing services*” in class 40.

26.1.3. “*digital imaging services*” in class 41.

26.2. UKTM NO. UK00906776819 (“**UK819**”), registered as of 19 March 2009 for **ISTOCK** in respect of, *inter alia*:

26.2.1. “*downloadable digital photographs, illustrations... and graphics*” in class 9.

27. Herein the aforesaid registered trade marks are referred to as “**the Trade Marks**”.

28. The registrations from the UKIPO are attached hereto at **Annex 4**. The goods and services identified above at paragraph 25 are referred to herein as “**the Goods and Services**”.



## Goodwill and Reputation

29. At all material times since at least 1 August 2006 the Getty Images Group has conducted its business as a creator of digital visual content in the UK, and as a provider and licensor of such content to customers in the UK under and by reference to the Trade Marks and each of them.

## PARTICULARS

Pending disclosure and/or evidence, the Claimants rely upon the following:

29.1. The First, Second, Third and Fifth Claimants' UK revenue, figures for which will be provided upon receipt of appropriate confidentiality undertakings.

29.2. Customers perform over 2.7 billion searches annually on the Getty Images Websites. In 2022 alone the Getty Images Websites received the following total visits from the UK:

Website	Total Visits
<a href="http://www.istockphoto.com">www.istockphoto.com</a>	19,811,423
<a href="http://www.gettyimages.co.uk">www.gettyimages.co.uk</a>	35,616,933

29.3. The First and Second Claimants have advertised and promoted the Goods and Services extensively in the UK, for example, via paid search brand and non-brand advertising on Google, Bing and other search engines, and via social media including Facebook, LinkedIn, Twitter and Pinterest. The amounts spent on advertising and promotion in the UK will be provided upon receipt of appropriate confidentiality undertakings.

29.4. Each photograph and video that appears on the Getty Images Websites prominently displays a watermark that contains one or other of the Trade Marks as shown in the following examples:



29.4.1. Photograph:



29.4.2. Video:





30. By reason of the matters aforesaid:

- 30.1. The Trade Marks and each of them have an enhanced distinctive character.
- 30.2. The Trade Marks and each of them have a reputation in the UK within the meaning of section 10(3) of the Trade Marks Act 1994 (“**the TMA**”).
31. Further, by reason of the matters aforesaid, the First to Fifth Claimants and/or one or other of them have built up, and now own substantial and valuable goodwill in relation to their business of providing the Goods and Services under and by reference to the Trade Marks. Accordingly, whenever members of the public see photographs or videos supplied under and by reference to the Trade Marks and each or any of them, they believe that the same are the photographs or videos of the Getty Images Group (or a member thereof) or the subject of some commercial arrangement with the Getty Images Group (or a member thereof).

### **The Defendant**

32. The Defendant is a company incorporated under the laws of England and Wales on 4 November 2019 under company number 12295325. It is engaged in the business of developing music and image generating systems using artificial intelligence (AI) models.

### **The acts complained of**

33. On or about 22 August 2022 the Defendant launched a deep learning, text-to-image AI model that is used to generate detailed synthetic images in response to commands entered by users, under the name Stable Diffusion (“**Stable Diffusion 1.0**”).
34. From a date currently unknown to the Claimants, but before 22 August 2022, Stable Diffusion 1.0 (and the various sub-versions that were subsequently released) was trained using various subsets of the LAION-5B dataset, specifically LAION-2B-en, LAION-high-resolution, LAION-improved-aesthetics, and LAION-aesthetics v.2 5+. Herein the LAION - 5B dataset is referred to as the “**LAION-5B Dataset**”, and the aforementioned subsets that were used to train Stable Diffusion 1.0 are referred to as the “**LAION-Subsets**”.



35. The LAION-5B Dataset and the LAION Subsets were created by LAION e.V. (an association registered in Hamburg, Germany (“LAION”)), whose business is in the provision of datasets for use in training AI models. According to the blog on the Defendant’s website at [www.stability.ai](http://www.stability.ai) (“the Stability Website”) LAION created the LAION-5B Dataset with support from the Defendant. A copy of the aforesaid blog is attached hereto at **Annex 5**.
36. The LAION-5B Dataset is a dataset comprising 5.85 billion CLIP-filtered (Contrastive Language-Image Pre-training) image-text pairs, created by scraping links to photographs and videos, together with associated captions, from the web, including from Pinterest, WordPress-hosted blogs, SmugMug, Blogspot, Flickr, Wikimedia, Tumblr and the Getty Images Websites. The LAION-5B dataset comprises around 5 billion links. The LAION-Subsets together comprise approximately 3 billion image-text pairs from the LAION-5B Dataset. At the date of these Particulars of Claim the Claimants have identified around 12 million links in the LAION Subsets to Content on the Getty Images Websites, which were so obtained without the consent of the Claimants.
37. Herein, the links in the LAION-5B Dataset and the LAION-Subsets to Content on the Getty Images Websites are referred to as “**the Scraped Links**”.
38. Stable Diffusion 1.0 was trained using around 12 million Visual Assets (of which around 7.3 million are Copyright Works), together with associated Captions, from the Getty Images Websites.
39. On or about 24 November 2022 the Defendant launched a further deep learning, text-to-image AI model that is used to generate detailed synthetic images in response to commands entered by users, under the name Stable Diffusion (“**Stable Diffusion 2.0**”).
40. From a date currently unknown to the Claimants, but before 24 November 2022, Stable Diffusion 2.0 was trained using the LAION-5B Dataset, filtered for NSFW (Not Safe For Work, for example pornographic or violent material) material (NSFW probability below 0.1) and aesthetic score above 4.5, with images of size 256x256. Further iterations of Stable Diffusion 2.0 were trained with the same settings but with larger sized images.



41. Stable Diffusion 2.0 was trained using around 7.5 million Visual Assets of which around 4.4 million are Copyright Works), together with associated Captions, from the Getty Images Websites.
42. Herein, Stable Diffusion 1.0 and Stable Diffusion 2.0 are referred to as "**Stable Diffusion**".
43. The Defendant's development team includes a significant number of individuals who reside and work in the UK, who will be identified upon receipt of appropriate confidentiality undertakings, including the Defendant's lead generative AI developer. It is to be inferred that, during the development and training of Stable Diffusion, visual assets and associated captions, used for the development and training of Stable Diffusion, including Visual Assets (including Copyright Works) and Captions from the Getty Images Websites, were downloaded on servers and/or computers in the UK.
44. In or about August 2022 the Defendant announced the launch of the Stability Website through which it sells, and has at all material times sold, access to compute time for generating images with Stable Diffusion, under the name Dream Studio. Dream Studio is also accessible at beta.dreamstudio.ai. Dream Studio is a commercial platform which enables the Defendant's customers to access and/or download Stable Diffusion to generate synthetic images. In an article published on 17 October 2022, the Defendant's CEO, Mr Emad Mostaque, was quoted as stating that Dream Studio already had more than 1.5 million users who had collectively created over 170 million images. A copy of the aforesaid article is attached at **Annex 6** hereto.
45. Dream Studio is available in and targeted at users in the United Kingdom. Pending disclosure and/or evidence, the Claimants rely on the following facts and matters:
- 45.1. The Stability Website is in English and contains a Union Jack on the home page.
- 45.2. The terms and conditions on the Stability Website state that the services are provided by the Defendant, who is based in the United Kingdom.



- 45.3. Dream Studio is described in Dream Studio FAQs as “*...as a service we are designing to enable anyone to access this powerful creative tool without the need for software installation, coding knowledge, or a heavy-duty local GPU....*” (emphasis added).
- 45.4. The Defendant says on its blog that “*The aim of DreamStudio beta is to share the incredible technology of diffusion models with the entire world by making it accessible and affordable with the absolute fastest compute available*” (emphasis added).
46. The Defendant also makes Stable Diffusion available to download on an open-source basis to third parties in the United Kingdom (and elsewhere) via GitHub and numerous third parties then make available commercial offerings using this technology, including directly in competition with the Claimants’ own commercial offerings.
47. The Defendant trained Stable Diffusion as follows:
- 47.1. LAION provided the Scraped Links to the Defendant, who then used the Scraped Links to visit the location of, and copy, some or all of the Content. That content (“**the Copied Content**”) was downloaded and stored by the Defendant in order to proceed with the subsequent steps set out below.
- 47.2. The Defendant encodes the Copied Content, which (in lay terms) involves pixelating and distorting the Copied Content to take up less memory, and separately encodes the paired text, thereby creating and storing further copies of the Copied Content (“**the Encoded Content**”).
- 47.3. The Defendant adds “noise” to the Encoded Content in a series of steps (“**the Noisy Copies**”). The addition of noise (which refers to something that is seen rather than heard) alters the image so that it is incrementally harder to discern what is visually represented because it has been cluttered by other elements that are not part of the original image. At each step, the model records how the addition of noise changes the image. While humans can easily ignore certain degrees of noise (or fit it within appropriate context), software programs have more difficulty in recognising an image that has been altered by noise. By intentionally adding noise to the Encoded Content,



the model learns that even an altered image of (for example) a dog, falls under the category of a dog. This step involves the creation and storing of further copies of the Copied Content and the Encoded Content.

- 47.4. The Defendant decodes each of the Noisy Copies back to a useable form (“**the Decoded Noisy Copies**”) which trains the model to deliver images matching the subject matter of the Copied Content, conditioned on encoded text. This step involves the creation and storing of further copies of the Copied Content, the Encoded Content, and the Noisy Copies.
- 47.5. The Defendant decodes the Decoded Noisy Copies again in order to scale each image up to a higher resolution (“**the Decoded Copies**”), thereby creating and storing further copies of the Copied Content, the Encoded Content, the Noisy Copies and the Decoded Noisy Copies.
- 47.6. The Defendant compares the Copied Content and the Decoded Copies and the difference in pixels used to update the neural network weights. This process is repeated thousands of times for each image with different levels of noise at each iteration, to teach the model weights how to recover an image from noise conditioned with semantic text caption information.
48. Once Stable Diffusion has undergone the aforesaid training, when a user enters text commands (either via Dream Studio or via a copy of Stable Diffusion downloaded from GitHub or via commercial offerings using Stable Diffusion), Stable Diffusion generates a synthetic image output.
49. In some cases, the synthetic image output comprises a substantial part of one or more of the Copyright Works and/or Visual Assets. Pending disclosure and/or evidence, the Claimants rely on the articles at **Annex 7** in which independent researchers have observed that Stable Diffusion sometimes memorizes and generates very similar images to those that were used to train it.



50. In some cases, the synthetic image output bears the sign GETTY IMAGES and/or ISTOCK as a watermark. Pending the provision of disclosure and/or evidence, the Claimants rely on the images bearing the GETTY IMAGES watermark which are attached at **Annex 8** hereto.
51. All of the aforesaid acts were undertaken without the consent of the Claimants.

### **The Defendant's Unlawful Acts**

#### *Copyright infringement*

52. By reason of the matters aforesaid, the Defendant has infringed the copyright in the Copyright Works by:
- 52.1. As regards the acts identified above at paragraphs 43 and 47, reproducing the whole or a substantial part of the Copyright Works or each or any of them, contrary to section 17 of the CDPA; and/or
  - 52.2. As regards the acts identified above at paragraphs 44 to 46 and 48 to 49, communicating a substantial part of the Copyright Works and each or any of them to the public contrary to section 20 of the CDPA; and/or
  - 52.3. As regards the acts identified above at paragraph 44 to 46 and 48 to 49, authorising acts of reproduction and/or communication to the public by users of Stable Diffusion contrary to section 16(2) of the CDPA; and/or
  - 52.4. As regards the acts identified above at paragraphs 44 to 46, importing into the United Kingdom, otherwise than for private and domestic use, an article, namely Stable Diffusion, which is and which the Defendant knows or has reason to believe is, an infringing copy of the Copyright Works or each or any of them, contrary to section 22 of the CDPA; and/or
  - 52.5. As regards the acts identified above at paragraphs 44 to 46, possessing in the course of a business, selling or letting for hire, or offering or exposing for sale or hire, an article, namely Stable Diffusion, which is and which the Defendant knows or has reason to



believe is, an infringing copy of the Copyright Works or each or any of them, contrary to section 23 of the CDPA.

53. Pending disclosure and/or evidence, the Claimants rely on the following facts and matters in support of the allegation at paragraphs 52.4 and 52.5 above that Stable Diffusion is an infringing copy of the Copyright Works or each or any of them:

- 53.1. By reason of the facts and matters at paragraphs 43 and 47, the making of Stable Diffusion constituted an infringement of the copyright in the Copyright Works or each or any of them; and/or
- 53.2. Stable Diffusion has been imported into the United Kingdom and, by reason of the facts and matters at paragraph 47, its making in the United Kingdom would have constituted an infringement of the copyright in the Copyright Works or each or any of them.

54. Pending disclosure and/or evidence, the Claimants rely on the following facts and matters in support of the allegation at paragraphs 52.4 and 52.5 above that the Defendant knows or has reason to believe that Stable Diffusion is an infringing copy of the Copyright Works or each or any of them:

- 54.1. It is common knowledge within the industry that works of the sort relied upon herein are protected by copyright and that acts of reproduction, communication to the public, importation and possession of copies in the course of a business are prohibited without the consent of the copyright owner.
- 54.2. The notice of requirement for a licence on the Getty Images Websites referred to at paragraph 11 above.
- 54.3. The letter from the Claimants' solicitors to the Defendant's solicitors dated 16 January 2023 notifying the Defendant of the Claimants' rights, including copyright in the Copyright Works.



***Database Right Infringement***

55. Further or alternatively, by reason of the matters aforesaid, the Defendant has infringed the database right in the Database by:
- 55.1. As regards the acts identified above at paragraphs 43 and 47, extracting a substantial part of the contents of the Database contrary to Article 7(1) of the Directive and Regulation 16(1) of the Regulations; and/or
  - 55.2. As regards the acts identified above at paragraphs 44 to 46 and 48 to 49, re-utilising a substantial part of the contents of the Database; and
  - 55.3. With the aforesaid extraction and re-utilisation taking place either in one go or by means of the repeated and systematic extraction and re-utilisation of insubstantial parts of the contents of the Database (as contemplated by Article 7(5) of the Directive and Regulation 16(2) of the Regulations).

***Trade Mark Infringement and Passing Off***

56. Further or alternatively, by reason of the matters set out above at paragraph 50, the Defendant has infringed the Trade Marks and each or any of them, by using in the course of trade, without the consent of the First Claimant:
- 56.1. A sign or signs identical to the Trade Marks in relation to goods and/or services identical to those for which the Trade Marks are registered, contrary to section 10(1) of the TMA.
  - 56.2. A sign or signs similar to the Trade Marks in relation to goods and/or services identical to those for which the Trade Marks are registered, where there exists a likelihood of confusion on the part of the public, contrary to section 10(2) of the TMA.
  - 56.3. A sign or signs identical or similar to the Trade Marks in relation to goods and/or services where use of that sign, being without due cause, takes unfair advantage or



causes detriment to the distinctive character or the repute of the Trade Marks, contrary to section 10(3) of the TMA.

57. In support of the foregoing, and pending disclosure and evidence herein, the Claimants rely upon the following facts and matters:

#### **PARTICULARS OF SIMILARITY/IDENTITY**

- 57.1. the Defendant's use of GETTY IMAGES is identical to UK859 and UK005, and used in relation to identical goods and/or services to those for which the aforesaid trade marks are registered as identified above under subparagraphs 25.1 and 25.2.
- 57.2. the Defendant's use of iSTOCK is identical to UK 297 and UK819, and used in relation to identical goods to those for which the aforesaid trade marks are registered as identified above under sub-paragraphs 26.1 and 26.2.
- 57.3. the Defendant's use of GETTY IMAGES is similar to UK925 and used in relation to identical goods and services to those for which the aforesaid trade mark is registered as identified above under sub-paragraph 25.3.

#### **PARTICULARS OF A LIKELIHOOD OF CONFUSION**

- 57.4. UK925 has a high degree of distinctive character, both inherent and as a result of the extensive use which has been made of it by the Third and Fourth Claimants as set out above at paragraph 29.
- 57.5. The sign used by the Defendant is highly similar to UK925 and used in relation to identical goods and services as aforesaid.

#### **PARTICULARS OF UNFAIR ADVANTAGE AND DETERIMENT**

- 57.6. The facts and matters set out above in sub-paragraphs 30.2 and 57.4 - 57.5 from which it is to be inferred that the use of the sign GETTY IMAGES in respect of photographs and digital imaging services (being identical goods and services to those for which



UK925 is registered) will cause a link to be made by the relevant public with the Claimants and their goods and services.

- 57.7. Such use will result in the Defendant taking advantage of the Claimants' investment in developing the reputation of UK925. It is to be inferred that such was the Defendant's intent, alternatively, such is the objective effect of the Defendant's use.
- 57.8. Further or alternatively, such use will result in the dilution of the distinctiveness of UK925.
- 57.9. Further or alternatively, Stable Diffusion can be used to create images that contain pornography, violent imagery, and propaganda. Any association with such content will tarnish the reputation of UK925.
- 57.10. Further still, the synthetic images generated by Stable Diffusion distort and/or manipulate the underlying image from which it was copied, which is prejudicial to the reputation of the author of the original work, and tarnishes the reputation of UK925.
- 57.11. Yet further still, UK925 (in particular when it is included as a watermark as set out above at paragraph 29.4) guarantees to members of the public that the work to which it is affixed is a genuine photograph or piece of footage. This guarantee will be eroded by the Defendant's use complained of herein, in particular, by affixing the sign GETTY IMAGES to the synthetic output as a watermark members of the public will no longer be able to rely upon UK925 as guaranteeing the authenticity of the works to which it is affixed, thus tarnishing the reputation of UK925.
58. Further or alternatively, the Defendant's use of the signs GETTY IMAGES and ISTOCK as aforesaid constitutes a misrepresentation that its synthetic image output is the photograph or video of the Getty Images Group (or a member thereof) or the subject of some commercial arrangement with the Getty Images Group (or a member thereof), contrary to fact. Pending disclosure and evidence herein the Claimants rely upon the facts and matters set out above at paragraphs 31 and 57.4 - 57.5 in support of the foregoing. In the premises, the Defendant has passed off itself and/or its goods and services as or for the Claimants or a member of the



Getty Images Group, or their goods or business, or as connected or associated or licensed by the Claimants or a member of the Getty Images Group.

### **Remedies**

59. By reason of the matters aforesaid the Claimants have suffered loss and damage.
60. Unless restrained, the Defendant threatens and intends to continue the acts complained of whereby the Claimants will suffer further loss and damage.
61. The Claimants are not currently aware of all of the Defendant's acts of copyright infringement, database right infringement, trade mark infringement and passing off, but at trial will seek relief in relation to all such acts.
62. The Claimants are entitled to, and (if they elect for damages) will seek additional damages in accordance with regulation 3 of the Intellectual Property (Enforcement, etc.) Regulations 2006 ("the 2006 Regulations") and/or pursuant to section 97(2) of the CDPA (which also applies to database right by virtue of Regulation 23 of the Regulations).

### **PARTICULARS**

Pending disclosure and evidence herein the Claimants rely upon the following facts and matters:

- 62.1. The facts and matters at paragraph 54 above.
- 62.2. The Defendant has acted with a cavalier attitude to the rights of the Claimants, infringing numerous different intellectual property rights on a blatant and widespread scale.
- 62.3. The Defendant has relied upon the infringement of copyright and database right for the successful operation of its business and Stable Diffusion has been or has the potential to be used by end users who would otherwise have used the Getty Images Websites.



63. The Claimants are entitled to, and claim, interest upon all sums found due to them pursuant to section 35A of the Senior Courts Act 1981 or under the equitable jurisdiction of the Court at such rates and for such periods as the Court shall deem just.
64. The Claimants seek an order pursuant to paragraph 26.2 of the Practice Direction to part 63 of the Civil Procedure Rules for appropriate measures for the dissemination and publication of the judgment to be taken at the expense of the Defendant.
65. The Claimants confirm that steps have been taken to preserve relevant documents in accordance with the duties under CPR Practice Direction 57AD paragraph 3.1(1), paragraph 3.2(1), and paragraph 4.1 to 4.4.

**AND THE CLAIMANTS CLAIM:**

- (1) Declarations that:
  - a. Copyright subsists in the Copyright Works and has been infringed by the Defendant.
  - b. Database right subsists in the Database and has been infringed by the Defendant.
  - c. The Defendant has infringed the Trade Marks and committed acts of passing off.
- (2) An injunction to restrain the Defendant, whether acting by its directors, employees, agents or any of them or otherwise howsoever, from doing the following acts or any of them in the course of trade in the United Kingdom, without a written licence or agreement from the Claimants:
  - a. Downloading, storing, copying or communicating to the public the Copyright Works or any substantial part thereof.
  - b. Authorising acts of reproduction and/or communication to the public of the Copyright Works or any substantial part thereof by users of Stable Diffusion.
  - c. Importing Stable Diffusion into the United Kingdom, otherwise than for private and domestic use.



- d. Possessing Stable Diffusion in the course of its business, or selling or letting it for hire, or offering or exposing it for sale or hire.
  - e. Extracting and/or re-utilising a substantial part of the contents of the Database.
  - f. Providing images or digital imaging services under or by reference to the sign GETTY IMAGES or ISTOCK or any sign colourably similar thereto.
  - g. Otherwise infringing:
    - i. The copyright in the Copyright Works.
    - ii. The database right in the Database.
    - iii. UK Trade Mark registration number 00911410859;
    - iv. UK Trade Mark registration number 00902313005;
    - v. UK Trade Mark registration number 00908257925.
    - vi. UK Trade Mark registration number 00908257297;
    - vii. UK Trade Mark registration number 00906776819.
  - h. Otherwise passing itself, its business or its goods or services off as and for the Claimants or otherwise the subject of some commercial relationship involving the Claimants.
- (3) An order for the delivery up or, at the Claimants' option, destruction upon oath of all documentation and other items in the possession, power, custody or control of the Defendant the use of which would constitute a breach of the foregoing injunctions, including the Copied Content, Encoded Content, Noisy Copies, Decoded Noisy Copies and Decoded Copies, and all versions of Stable Diffusion.
- (4) An inquiry as to damages (including additional damages) for copyright infringement, database right infringement, trade mark infringement and passing off or, at the election of the Claimants, an account of the profits accrued by the Defendant by reason of its unlawful acts as aforesaid.
- (5) An order for payment to the Claimants of all sums found to be due to them upon the taking of the said inquiry or account with interest thereon to be assessed under section



35A of the Senior Courts Act 1981 or under the equitable jurisdiction of the Court at such rate or rates and for such periods as the Court shall deem just.

(6) Publication and dissemination of the Judgment, at the Defendant's expense.

(7) Costs together with interest.

(8) Further or other relief.

**LINDSAY LANE KC**

**JESSIE BOWHILL**

**STATEMENT OF TRUTH**

The First to Fifth Claimants believe that the facts stated in these Particulars of Claim are true. The First to Fifth Claimants understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I am duly authorised to sign the Statement of Truth on behalf of the First to Fifth Claimants.

Signed:   
Name: Kjelti Kellough  
Position: Senior Vice President & General Counsel, Getty Images  
Date: 11-05-2023 | 19:50:43 BST

The Sixth Claimant believes that the facts stated in these Particulars of Claim which relate to the Sixth Claimant are true. The Sixth Claimant understands that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I am duly authorised to sign the Statement of Truth on behalf of the Sixth Claimant.



DocuSigned by:

Signed:

Thomas Barwick

768188AC81F94EC...

Name: THOMAS M. BARWICK

Position: President, Thomas M. Barwick, Inc.

Date: 12-05-2023 | 00:51:01 BST

SERVED on 12th May 2023 by solicitors for the Claimants, Fieldfisher LLP, Riverbank House, 2 Swan Lane, London EC4R 3TT.